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In the Supreme Court of the United States

OCTOBER TERM, 1979

STRAWBERRY WATER USERS ASSOCIATION, ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Claims (Pet. App. 1a-34a) is reported at 611 F. 2d 838.

JURISDICTION

The judgment of the Court of Claims was entered on December 12, 1979. The petition for a writ of certiorari was filed on March 11, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the Court of Claims erred in granting the United States' summary judgment motion and dismissing petitioners' inverse condemnation action on the ground that petitioners had no compensable interest in the disputed public lands.

STATEMENT

Petitioner Strawberry Water Users Association[1] brought this inverse condemnation action in November 1973, claiming a compensable interest in certain public lands that are part of the Strawberry Valley Reclamation Project, an irrigation project that was built under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, 43 U.S.C. 372 *et seq*. The project, which was completed in 1915, consists of a dam and reservoir, various irrigation works and a power plant. The project area encompasses some 57,000 acres that were withdrawn from the Uintah Indian Reservation in 1905 (Pet. App. 6a-9a). The reservoir consists of approximately 8,400 acres, while the remainder of the tract is watershed (*id*. at 4a).

In 1973, as part of the Central Utah Project,[2] the government completed construction of a larger downstream dam. The waters impounded by the new dam will eventually inundate the Strawberry dam, and the new reservoir will flood a portion of the Strawberry watershed.[3] Petitioners, who claim that they have a property interest in the Strawberry watershed, brought this action to secure compensation for the alleged taking (Pet. App. 4a-5a).[4] The Court of Claims granted summary judgment

[1]An amended complaint, which was filed in December 1974, joined 99 individual water users as additional parties plaintiff (Pet. App. 4a). They are also petitioners in this Court.

[2]Act of April 11, 1956, ch. 203, 70 Stat. 105, 43 U.S.C. 620 *et seq*.

[3]Petitioners also claim an interest in a 20-acre parcel over which the United States Bureau of Reclamation has acquired jurisdiction from state officials. That parcel will be used for fishery activities (Pet. App. 4a).

[4]Petitioners have not claimed any compensable interest in other project structures such as the dam, irrigation works, or power system.

for the United States because "there was no taking of a property interest owned by [petitioners] in such lands" (Pet. App. 3a).

1. The Reclamation Act of 1902 established a fund for financing public reclamation projects and further provided for the replenishment of that fund by authorizing charges to be levied against the projects' water users. Sections 1 and 4, 32 Stat. 388, 389, 43 U.S.C. 391, 419 and 461. The 1902 Act also contemplated that the water users of a particular project would become responsible for its maintenance and operation after they had repaid the major part of its construction costs. Section 6, 32 Stat. 389, 43 U.S.C. 498. At the same time, Congress specifically provided that "the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress" (*ibid*.).

In 1910, Congress extinguished the Indians' title to the lands used in the development of the Strawberry Valley Reclamation Project, and it directed the Secretary of the Interior to pay for the lands at the rate of $1.25 per acre. Act of April 4, 1910, ch. 140, Section 23, 36 Stat. 285.[5] The statute further provided that the cost of acquiring the Indian lands would be added to the construction costs that the water users would be required to repay. Whatever revenues would be generated by the unflooded watershed

[5]The Secretary originally acquired the lands at a total cost of approximately $71,000. The Indians subsequently sued the United States to recover the value of the lands that had been withdrawn, however, and they succeeded in securing an award substantially greater than the original purchase price. *Uintah and White River Bands of Ute Indians* v. *United States*, 139 Ct. Cl. 1, 25, 98 (1957). That additional cost has never been assessed against the water users.

lands were to be credited, however, against the water users' indebtedness to the reclamation fund. In addition, the 1910 Act stated that (36 Stat. 285):

> the title management and control [of the Indian lands] shall pass to the owners of the lands irrigated from said project whenever the management and operation of the irrigation works shall so pass under the terms of the Reclamation Act [of 1902].

In 1924, Congress amended the general reclamation laws to authorize associations of water users to assume the care, operation and maintenance of their project works. Second Deficiency Act, Fiscal Year 1924 (Fact Finders Act), ch. 4, Section 4, Subsection G, 43 Stat. 701, 702-703, 43 U.S.C. 500. Congress also authorized the associations to credit any net profit from power plant operations, or from the sale or lease of project lands, against their indebtedness to the fund. Subsection 1, 43 Stat. 703, 43 U.S.C. 501. In 1926, Strawberry Water Users Association agreed to undertake the care, operation, and maintenance of the project.[6] In return, the Association was permitted to credit receipts from the watershed lands and the power system against the balance of its indebtedness. The contract specifically provided, however, that title to the watershed lands would not pass to the Association "until at least 51 percent" of the construction cost was repaid to the United States (Pet. App. 25a-27a). In 1928, the parties executed a supplemental contract,

[6]Actual transfer of management was not to occur until the Association sold 82% of the water rights. Two laterals and a canal were not to be included in the transfer (Pet. App. 49a).

which transferred management and control of the watershed lands[7] to the Association, and again stated that title remained in the United States (Pet. App. 27a & n.25).

The most recent contract, which was executed in 1940, specifically abrogated any existing agreement to transfer title upon repayment of a certain percentage of the construction costs, and further stated that title to the watershed lands would be "retained by the United States until otherwise provided by Congress" (Pet. App. 56a, 57a-58a).[8] The Association's management and control of the project were continued, however, and receipts from watershed lands continued to be credited against the water users' indebtedness (Pet. App. 48a-52a, 57a). The Association fully satisfied that indebtedness on November 30, 1974 (Pet. App. 34a).

Between 1921 and 1967, various Department of the Interior officials expressed their views as to the nature of the water users' purported interest in the watershed lands. These officials characterized petitioners' interest, for various purposes and in various circumstances, as "a

[7]Some confusion had apparently arisen as to whether the Association had been given management and control of the watershed lands under the 1926 contract: "The explanatory premises in the 1928 contract, however, distinguish watershed lands from other project works, and assert that care, operation, and maintenance of the watershed lands did not pass to the association by the 1926 contract. The premises also assert, in the interest of economical administration of the water users 'for whose benefit said lands were purchased,' that 'management and control (but not title)' should be transferred to the association even though 51 percent of the project construction costs had not been paid" (Pet. App. 27a).

[8]The Court of Claims found that the Association specifically sought the inclusion of this provision for state property tax avoidance purposes (Pet. App. 28a-29a).

valuable right," a "quasi-equitable title to an interest," or a "beneficial interest" (Pet. App. 22a, 25a, 32a). At no time after the execution of the 1940 contract, however, did any official state that the water users had acquired legal title to the watershed lands. After 1940, moreover, the officials' statements were limited to questions concerning the water users' right to credit revenues against their indebtedness.

2. In November 1973 the Association filed this inverse condemnation action seeking compensation for its alleged interest in the affected watershed lands. Cross-motions for summary judgment, limited to the question whether the water users had a compensable interest, were referred to a trial judge for recommendation under Court of Claims Rule 54(a). The trial judge held that the water users were not entitled to compensation for the taking of the watershed lands because, under the relevant statutes and contracts, the United States retained title and petitioners had no compensable interest in the property (Pet. App. 5a). In addition, the trial judge held that petitioners had an interest in revenues from the watershed lands, "but that in the absence of a showing that they would lose revenues currently being credited to the project, they would not be entitled to recover" (Pet. App. 2a).

Both sides sought review of the trial judge's recommended decision under Court of Claims Rule 54(b)(3). The Court of Claims substantially adopted the trial judge's recommendation, but it deleted that section of his opinion which considered the question whether petitioners had a continued right to receive revenues from the watershed lands (Pet. App. 2a). The Court of Claims agreed with the parties that that issue was both

unnecessary to the disposition of the action and beyond the court's jurisdiction (*ibid.*).[9] Holding that the 1928 and 1940 contracts had "conveyed or relinquished" to the United States whatever interest in the watershed lands petitioners might have had, if any, the Court of Claims dismissed petitioners' action on the ground that they had no compensable interest in the land affected by the Central Utah Project (Pet. App. 2a-3a).

ARGUMENT

The decision of the Court of Claims is correct, and it does not conflict with any decision of this Court or any other court. Furthermore, the issues raised lack general importance and depend largely on the unique circumstances of this case. The decision below does not warrant further review.

1. Petitioners contend that they are entitled to compensation for the government's alleged taking of the Strawberry watershed lands in connection with the

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[9]While the Court of Claims specifically adopted and republished the trial judge's findings and conclusions, it rejected his holding with respect to the question of petitioners' interest in future revenues from the watershed lands (Pet. App. 2a-3a). The Court of Claims agreed with petitioners that that question was not necessary to the disposition of their inverse condemnation action and, accordingly, that the Court of Claims lacked jurisdiction to consider it (Pet. App. 2a):

> Plaintiffs assert that they are seeking a money judgment for a Fifth Amendment taking here; that the right to future distributions is not in issue, and that in any event, the court has no jurisdiction to rule on the question of such distributions. At oral argument, plaintiffs also made it clear that they are not suing to recover damages for a breach of any contractual right.
>
> We agree with the parties that the right of the plaintiffs to future revenues, including the distributions of profits, is not an issue in this case and we have attempted to delete those portions of the trial judge's opinion which make conclusions of law on these questions.

development of the Central Utah Project. While the Court of Claims correctly held that petitioners had no compensable interest in the watershed lands, petitioners attempt to create such an interest out of a variety of statutes and contracts dating back to 1902 (Pet. 16-17). Petitioners' argument is untenable for two reasons. First, the Court of Claims properly held that petitioners relinquished any property rights that they might have had by executing the 1940 contract, which explicitly disclaimed any and all such rights (Pet. App. 3a). Second, the various statutes and contracts upon which petitioners rely are insufficient to create a property right in any event.

In 1940 petitioners and the government entered into a contract concerning the management and operation of the Strawberry Valley Reclamation Project (Pet. App. 41a-66a). That contract expressly superseded existing contracts, specifically abrogated any outstanding agreement to transfer title to the water users upon repayment of a certain percentage of the construction costs, and unequivocally stated that "it is agreed that title to the [watershed] lands * * * shall be retained by the United States until otherwise provided by Congress" (Pet. App. 56a).[10] It is undisputed that no Act of Congress has since purported to transfer title to the water users.

[10]The quoted contractual provision refers to "the lands described in the attached schedule A" (Pet. App. 56a). Those lands are the 57,000 acres that were withdrawn from the Uintah Reservation and include the watershed lands (Pet. App. 26a). Petitioners also suggest (Pet. 16-17) that the 1910 Act transferred management and operation of the project lands to the water users. The relevant portion of the Act (Pet. App. 36a) shows only that management and operation of these lands would pass at some future time. The only benefit actually conferred by the 1910 Act was the right to have receipts from the watershed lands credited against the water users' construction cost obligation. 36 Stat. 285.

Based on its construction of the 1940 contract, as well as an earlier contract that had been executed in 1928,[11] the Court of Claims found that petitioners had no property interest protected by the Fifth Amendment. The court held (Pet. App. 3a):

> Regardless of what interests [petitioners] may have had in the project lands prior to 1928, we hold that as a result of the contracts entered into with the United States in 1928 and particularly in 1940, [petitioners] conveyed or relinquished to the United States and were divested of any property interest, legal or equitable, that entitles them to recover for a taking of the project lands in issue in this case and that there was no taking of a property interest owned by them in such lands.

The holding is clearly correct. Indeed, the only substantive response that petitioners make is to assert (Pet. 2) that they "unwittingly relinquished" their interests in 1940. On the contrary, the Court of Claims found that petitioners knowingly and intentionally embraced this provision in an effort to establish that they were not liable for assessment of state property taxes (Pet. App. 29a).

While the Court of Claims' holding with respect to the effect of the 1940 contract is both correct and dispositive, it is also clear that petitioners' attempt to weave a property right from pre-1940 statutes and contracts must fail. In 1910, Congress extinguished the Indians' title to the project lands and transferred title to the United States.

[11]The 1928 contract also specifically provided that title remained in the United States (Pet. App. 27a & n.25).

36 Stat. 285.[12] That being the case, petitioners could have acquired title to the watershed lands only by express and unambiguous statutory conveyance. No such conveyance has ever occurred. While petitioners suggest (Pet. 16-17) that the 1910 and 1924 Acts establish their title, their reliance on those statutes is misplaced. It is well-established that statutes purporting to grant an interest in public property should be strictly construed to ensure that any transfer of the public domain does not exceed that intended by Congress. *United States* v. *Grand River Dam Authority*, 363 U.S. 229, 235 (1960); *United States* v. *Union Pacific R.R.*, 353 U.S. 112, 116 (1957); *Caldwell* v. *United States*, 250 U.S. 14, 20 (1919). Consistent with that principle, the 1910 and 1924 Acts could not be construed to invest petitioners with a compensable interest in the watershed lands.

The 1902 Act provided for the transfer of project management and operation responsibilities to water users in certain circumstances, but it further explicitly provided that title to the projects would remain in the United States unless otherwise provided by Congress. 43 U.S.C. 498. While the 1910 Act provides that title, management and control of the former Indian lands should pass to the water users "whenever the management and operation of the irrigation works shall so pass under the terms of the [1902 Act]" (36 Stat. 285), the 1910 Act did not purport to make any immediate transfer of the property,

[12]Petitioners suggest (Pet. 16-17) that that portion of the 1910 Act which extinguished the Indians' right to the watershed lands somehow created a property interest in the water users. The 1910 Act is unambiguous, however, in making any transfer of title to them contingent upon the occurrence of future events.

and it cannot reasonably be construed as granting a property right to the water users.[13]

Finally, petitioners contend (Pet. 17) that the 1924 Act created certain unspecified "beneficial and equitable interests" by granting water users the right to use net profits from the watershed lands and power plant "as the water users may direct." 43 U.S.C. 501. While petitioners now rely on that provision in an effort to sustain their alleged property interest, the fact is that they abandoned that argument in the Court of Claims, conceding that this inverse condemnation action does not raise any issue concerning distribution of profits from the watershed lands (Pet. App. 2a-3a).[14]

In sum, there is no basis for petitioners' suit because they can show no compensable interest in the watershed lands. The Court of Claims properly granted the government's motion for summary judgment.

[13]As the Court of Claims noted, the real significance of this language was that "title, management and control of the watershed lands were to be subject to the same disposition in the future as applied to other lands in the reclamation program that were utilized for reservoirs and were necessary for the protection of reservoirs" (Pet. App. 16a-17a).

[14]On review from the trial judge's recommendation, petitioners properly conceded that the disposition of future revenues was not an issue within the jurisdiction of the Court of Claims (Pet. App. 2a). The Court of Claims concurred in that view and suppressed the trial judge's findings on that issue (*ibid.*). Nevertheless, petitioners now assert that the Court of Claims held that "while the water users * * * possibly may continue to receive revenues from the part of the land not being taken, they have no compensable property interest * * * in the land being taken" (Pet. 3). In fact, the Court of Claims found that it had no jurisdiction to consider the question whether petitioners had any right to continued receipt of such revenues, and it properly declined to intimate any judgment on that question (Pet. App. 2a-3a).

2. Petitioners also seek (Pet. 6-9, 11-17) to establish the existence of a compensable interest by asserting that they relied on statements made at various times and in various contexts by government officials who referred to the water users' "beneficial interest" or "quasi-equitable title to an interest" in the watershed lands. Such phrases, even when uttered by government officials, cannot estop the government or otherwise create an interest in public property when Congress had not expressly authorized conveyance of that property. *United States* v. *California*, 322 U.S. 19, 39-40 (1047); *United States* v. *San Francisco*, 310 U.S. 16, 31-32 (1940); *West* v. *Standard Oil Co.*, 278 U.S. 200, 220-221 (1929). While the Department of the Interior is charged with the administration of the public lands, it has no authority to enlarge whatever rights may have been created by Congress. *West* v. *Standard Oil Co.*, *supra*, 278 U.S. at 220. In determining whether petitioners had any compensable interest in the watershed lands, the Court of Claims properly looked only to the statutes and contracts which governed the Strawberry Valley project.[15]

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[15]To bolster their argument, petitioners contend that these official statements constitute a consistent administrative interpretation which this Court should adopt (Pet. 11-17). That contention is erroneous on at least two grounds. First, the statements upon which petitioners rely do not constitute a consistent administrative interpretation. They represent only *ad hoc* responses to specific questions and in no way purport to answer the ultimate question that lay at the heart of this case. Moreover, with respect to that ultimate question, it is inconceivable that those statements could provide an answer more definitive than that provided by the 1940 contract. Second, the principal rationale for this guidepost to statutory construction is detrimental reliance on the agency's interpretation of a statute. *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 457-458 (1978); *Udall* v. *Tallman*, 380 U.S. 1, 18 (1965); *McLaren* v. *Fleischer*, 256 U.S. 477, 481 (1921). Whatever contemporaneous reliance petitioners might have placed on these statements, that reliance was clearly not detrimental. From 1910 until the end of 1976, the Strawberry Valley project generated approximately $4.2 million in net profits (Pet. App. 17a). On November 30, 1974, the Association made its final payment in satisfaction of the construction costs which, including the approximately $71,000 paid to the Indians under the 1910 Act, amounted to less than $3.5 million (Pet. App. 34a). Petitioners not only suffered no out-of-pocket expense, but the project paid for itself. Moreover, while the United States eventually had to pay the Indians more than the original $71,000 for the watershed lands, that additional cost was not shared by the water users. See *Uintah and White River Bands of Ute Indians* v. *United States*, 139 Ct. Cl. 1, 25, 98 (1957). Petitioners are clearly unable to show that they suffered any detrimental reliance. On the contrary, they are simply attempting to secure a windfall for themselves by exploiting the legal complexity that is inherent in a course of dealings lasting more than seventy-five years. To put the matter in proper perspective, one need only contemplate the free benefits that petitioners have received as a result of this project.

In light of the 1940 contract and petitioners' concession that their right to future revenues is not at issue in this lawsuit, petitioners' attempt to invent a compensable interest based on unsubstantiated reliance on inapposite statements by government officials is disingenuous. In reality, petitioners seek compensation with respect to land for which they have never incurred any out-of-pocket cost, which has actually paid for itself, and which petitioners have never owned in any event. The Court of Claims properly recognized that petitioners' claim for compensation is groundless.

3. The issues raised by this action are unique, they have no general importance, and they do not warrant further review.

Although the 1940 contract may be representative of standard reclamation contracts in some respects,

petitioners ignore— rather than challenge—the provisions of that contract. To the extent that petitioners' claim has any conceivable merit, it rests on the unique language of the 1910 Act, which applied only to the Strawberry Valley Reclamation Project. While the Court of Claims was clearly correct in holding that the 1910 Act did not pass title to the Strawberry Valley water users, the 1910 Act is the only statute which could even arguably be so construed. No title to any reclamation project has ever been transferred by such a statutue. Moreover, much of the "administrative interpretation" upon which petitioners rely (Pet. 11-17) relates only to the unique language of the 1910 Act. In light of the significance which petitioners themselves attach to the 1910 Act (*e.g.*, Pet. 16-17), it is clear that this action is unique and the issues presented here are not likely to arise again.[16]

This case involves only the interpretation of special legislation enacted for this project and of three contracts between the United States and the Association. It does not present any important question of federal law that should be settled by this Court.

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[16]Even assuming the correctness of petitioners' assertion that ten other reclamation projects have completed repayment of the construction debt (Pet. 18 n.23), the only issue presented by this case—whether petitioners' interest is compensable under the Fifth Amendment—would not arise again unless a purported taking occurs at one of those projects. Moreover, that issue would not arise in a posture analogous to that of this case because the proper construction of the 1910 Act would be irrelevant to any other reclamation project.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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